

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

WALTER ELLIOTT SMITH, II,

Petitioner,

v.

CIVIL ACTION NO. 5:16-cv-07428

D. L. YOUNG, *Warden*,

Respondent.

MEMORANDUM OPINION AND ORDER

On July 20, 2016, the Petitioner, acting pro-se, filed his *Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241* (Document 1). On October 11, 2016, *Respondent's Motion to Dismiss* (Document 11) was filed. The Petitioner filed his *Response to Respondent's Motion to Dismiss* (Document 13) on October 19, 2016, wherein he requests an evidentiary hearing and denial of the dispositive motion.

By *Standing Order* (Document 5) entered on August 10, 2016, this action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On March 8, 2017, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 14) wherein it is recommended that: the *Respondent's Motion to Dismiss* (Document 11) be granted; the Petitioner's *Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241* (Document 1) be denied; the Petitioner's request for an evidentiary hearing (as referenced in Document 13) be denied; and that this action be dismissed with prejudice and removed from the Court's docket.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were originally due on March 27, 2017. On motion of the Petitioner, the Court extended the objection deadline to April 17, 2017. As of April 19, 2017, neither party has filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that: the *Respondent's Motion to Dismiss* (Document 11) be **GRANTED**; the Petitioner's *Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241* (Document 1) be **DENIED**; the Petitioner's request for an evidentiary hearing (as referenced in Document 13) be **DENIED**; and that this action be **DISMISSED WITH PREJUDICE** and **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented party.

ENTER: April 20, 2017



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA